ARGUMENT

OF

WENDELL PHILLIPS, ESQ.

AGAINST THE REPEAL OF THE

PERSONAL LIBERTY LAW,

BEFORE THE

COMMITTEE OF THE LEGISLATURE,

TUESDAY, JANUARY 29, 1861.

PHONOGRAPHIC REPORT BY J. M. W. YERRINTON.

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ARGUMENT.

Mr. Chairman, and Gentlemen of the Committee:

What are we here to consider? It is the claim, or request, of some citizens of the Commonwealth, and some influences outside of it, that one of our statutes should be repealed. What is the cause of that request, and what is the statute? It is a statute to secure—so it is named—the personal liberty of individuals within the Commonwealth. Why do any persons ask its repeal? Because it is supposed to conflict with a statute of the United States, termed the Fugitive Slave Bill. What is that bill? It is a bill to carry out a clause of the Constitution of the United States, which says that persons bound to service or labor in one State, shall not be freed from that bond by escaping to another State, but shall be delivered up on claim.

What is the objection to this Fugitive Slave Bill, that men are so anxious to have it countervailed, resisted, curbed, by the laws of Massachusetts? It seems to me, there is where our investigation commences.

What is this Fugitive Slave Bill, and why do we hate it? For I am willing to allow, Mr. Chairman, at the outset, that I value this Personal Liberty Bill not only for the protection that it gives to the free natives of Massachusetts, but for the measure of protection that it gives to fugitive slaves within the Commonwealth. I claim that, with one limitation,—that of the Constitution of the United States,—Massachusetts has a right to protect every human being within her borders, slave whether he may have been previously, or not. I wish it, therefore, understood, at the outset, that it is no objection, in my mind, that this Personal Liberty Bill does cover certain liabilities and dangers of fugitive slaves. And again, Mr. Chairman, I wish to speak to you, to-day, as under the Constitution, as I would address persons sworn to support the Constitution of the United States. I repudiate that Constitution; but I come to address a Legislature which stands under that law, and, of course, I wish to offer them such arguments as they are authorized to consider. What is, then, the Fugitive Slave Bill? It is a bill, as you know, that puts a man on trial for something more valuable than life, not before a judge, but before an officer whom a judge appoints, and may remove to-morrow.

It says that his liberty may be sacrificed, on the affidavit of nobody knows whom, taken nobody knows where, before nobody knows what. No opportunity to cross-examine that witness, no opportunity, even, to know whether the apparent judge who signs the affidavit is a judge, whether the person who makes it is a living being, no means of cross-examination or scrutiny whatever. And on the faith of such a witness, and, if the Commissioner pleases, without any further proof, even of identity, a man is to be taken from a place where he has lived twenty years,—for aught you know, where he was born,—and carried away a thousand miles, or three thousand. Then he will have a trial somewhere, perhaps, if somebody permits.

It is not necessary to refer here to such a time-honored principle, for which we have fought for centuries, for which the Constitution of the United States contains a guarantee, as that a man on trial shall be confronted with his witnesses; that he shall be tried by due process of law, which every legal authority, from Coke down to Story, says means a jury. Beside that, witness Hancock and Adams, witness all the arguments of the Revolution, that he shall be tried in the vicinage where he is found, other things being equal. I say, this statute violates all these provisions. I need not go into argument upon this point. It is a statute that made the blood of the Christian world run cold.

Massachusetts having, in 1855, affirmed by the unanimous voice of her Legislature, that the Fugitive Slave Bill was unconstitutional—reasonably alarmed at the peril to which it exposed her citizens, puts on her statute book a law to curb it as far as possible. Now timid men say to the Commonwealth, "Take that law off." Well, gentlemen, do you know what you are curbing? We have had Simms cases and Burns cases, where men, without, I might almost say, even the form of a trial, without a tittle of what the common law calls evidence, have been carried down our most public streets, in express and contemptuous defiance of the wish of Massachusetts—of the spirit of her institutions, of all her history.

But that is not all, gentlemen. The slave Commissioner sits omnipotent, and his certificate is final. Nobody can overlook it. It admits no appeal. What does it mean? It means that the slave-hunter may take his slave man or woman, and do what with them? Do you know what he may do, Mr. Chairman? The slave-hunter left the city of Boston, in those cases, in three hours, "because he feared the people"; but it is not necessary he should leave in three hours—he may stay a reasonable time—twelve hours—twenty-four—the time necessary for the usual arrangements to quit a State. What may he do in that time, sir? Let me tell you what he may do. The Prigg case says—and that is the foundation case, on this

question—the Prigg case says, this Fugitive Slave clause "puts the right to service or labor on the same ground and to the same extent"—(please mark the phrase)—"*on the same ground and to the same extent*"—in every other State, as in the State from which the slave escapes." That is, a Virginian comes to Boston, and when he puts his hand on the shoulder of his slave in this city, he has, identically, unqualifiedly, *the same right* to him that he has in Virginia. This is what Judge Story says—"ON THE SAME GROUND AND TO THE SAME EXTENT."

Again, the Judge, speaking for the Supreme Court, asserts—"That any State law which interrupts, limits, delays, postpones the right of the owner to the immediate possession of the slave, and the immediate command of his service, operating, *pro tanto*, as a discharge, is unconstitutional."

Observe, therefore, when Mr. Suttle takes Anthony Burns, or when Ira Taylor puts his hand on the shoulder of Ellen Craft, he will have the same right for those twelve hours in the Commonwealth of Massachusetts, to the same extent that he had in Georgia or in Richmond. Any law that "limits or postpones that right" is void. Suppose he had said to Ellen Craft, "This is my chamber, come and occupy it with me!" will you say that no law in the Commonwealth of Massachusetts can limit or postpone that Georgian right? And yet you do say so when you submit to the ruling of the Court in the Prigg case, and to the Fugitive Slave Bill.

Suppose he had taken Anthony Burns in front of the Revere House, and publicly whipped him,—so that it be moderate correction, and not endangering his life, which the law of Virginia allows, and which, according to the Prigg case, no law of Massachusetts has a right to limit or postpone,—do you submit to that? May he put his hand on man for punishment, and on woman for degradation, and is the Commonwealth of Massachusetts bound to stand by a fettered and silent witness? If so, then of such a group the slave is the only one who is not forever and unutterably degraded.

Do you say the Court will never sanction such acts, though their language does cover them? I reply, the whole history of this slave clause shows the contrary. The Courts have pushed it far beyond its original meaning, and allowed the slaveholder under it rights of which the fathers never dreamed. They have never showed any reluctance to put into relentless practice the harshest provisions of the Fugitive Slave Bill itself. Do you say the slave-hunter will never dare so to insult Boston? Why not? Has our city manifested any such persevering opposition to any demand of the Slave Power, however degrading to ourselves?

The *Daily Advertiser* said, in 1850, in two or three successive

articles, that the Fugitive Slave Bill could not be passed; and to-day that *Daily Advertiser* warns you to repeal every statute in opposition to it. The whole Commonwealth of Massachusetts scouted the idea that that bill could ever become a law. To-day, with one or two exceptions, the whole press of Boston warns you, implores you, not to touch a tittle or iota of that very statute! I tell you, if the slave-hunter chooses to use his slave, in the city of Boston, to the extent of his rights under the Prigg case, there is no police in Boston that will prevent it; nothing but a rebellion of Christian hearts can prevent it.

This, then, is the law, as the Supreme Court affirms it. I do not know, gentlemen, that the Commonwealth can curb or restrain it—can save herself from such dishonor; *but she can try.* This Personal Liberty Bill is, in one view, such an effort. In another view, it is an effort to save our free men from being enslaved under the heedless and cruel provisions of the Fugitive Slave Bill. I wish the Committee and the Commonwealth to understand, if we take from our statute-book this curb on the Fugitive Slave Bill, and Fugitive Slave Bill decisions, what we submit to, and how far we get down on our knees before the Slave Power. The Fugitive Slave Bill is, in fact, nothing less than making the slave law of the South the law of Massachusetts—that is its exact purpose and effect.

Massachusetts has placed this Personal Liberty Law on her statute-book. For what purpose? To hold and cover all the ground she possibly can, under the Constitution, against the ruthless demands of this last Fugitive Slave Bill. Ever since 1791, our history is full of protests by State Legislatures and State Courts against the slave clause, and the laws Congress has made under it. This last Bill exacts more than has ever been asked before. Laws, however carefully worded at first, have their operation qualified and limited by subsequent legislation and the construction of courts, as events require. This Bill has been recognized as law and held constitutional by the Supreme Court in one case. But courts often change their minds, and reverse their decisions. At any rate, perhaps the Court will, on more mature consideration, see reason to limit and restrain some of the broad provisions of this Bill. To afford means for this revision of the Court's opinion, to try whether some exceptions may not be allowed to the provisions of the Bill, and to prevent the possibility of a free man being confounded, by its carelessness, with the slave, Massachusetts enacts this Personal Liberty Law. It claims only what the common law has allowed her for centuries towards the protection of her free citizens. She will not without a struggle relinquish one tittle of such rights. If any provision conflicts with United States law, the proper courts will set it aside. But the very *question* of such conflict affords a fresh opportu-

nity of re-arguing the validity of the Fugitive Slave Bill, or of obtaining some qualification of its harshest features.

What is this Personal Liberty Bill? Its provisions are simply these: that in case a man is arrested under the Fugitive Slave Law, the Supreme Court may grant a *habeas corpus*. What is that? It is a command, substantially, that whoever holds a man in custody shall come before the court, and tell it why he holds him. If the court think the arrest illegal, on the face of it, they order the man to be discharged. If the court find facts stated, about which there is some dispute, they may summon a jury to decide such facts. This, gentlemen, is the substance of the whole Personal Liberty Law, and specially of the 19th, 20th and 21st sections, which are the only ones relied on to show that the law conflicts with the Fugitive Slave Bill.

Why, then, should such a statute be repealed?

In the first place, who asks us to repeal it? It is said South Carolina asks us; but she does not,—she has not asked any thing of the kind. Who does ask us to repeal it? Why, the Mayor and Aldermen of Boston,—a body which keeps every law, except those which protect liberty and hinder intemperance! I do not think their voices ought to be very potent in changing laws until they learn to obey them.

Other influences have been sent to Washington. Compromise fills the air. I desire to be respectful to every man, before the Commonwealth. One Slave Commissioner urges the Legislature, before another Committee, to compromise. He did so yesterday. I do not think he is to be taken as an indication of the moral sense of the Commonwealth of Massachusetts. I remember, gentlemen, that when Robespierre was pleading for his life against the National Convention, a voice cried, "The blood of Danton chokes you!" When George T. Curtis asks the Legislature of Massachusetts to compromise, the blood of Thomas Simms chokes his utterance. These, and others like them, are the counsellors of repeal.

Why do they ask us, in fact, to repeal? Our Personal Liberty Law is no new law, gentlemen. My esteemed friend, Mr. Sewall, referred to it as subsequent to 1850. So it is, technically; but Massachusetts has never been without a statute of this kind—never! Pardon me a moment, Mr. Chairman, while I look back to the history. We had this slave clause in '89, in '91; and certain men kidnapping a colored person in Pennsylvania, Governor Mifflin and George Washington had a correspondence together on the subject, which led to the enactment of the law of 1793. What did the States immediately begin to do? The States, by their courts and by their statutes, immediately began the effort to curb that power within the narrowest constitutional limits. If you trace the doctrine down

through Sargeant and Rawle, through Wendell and the whole of the New York Reports, through the statute-books of New Jersey and this State, you will find that every Commonwealth instantly indicated its purpose to uphold the Constitution, but not one iota more, not one. When, in 1836, our revisers dropped the personal replevin out of the statute-book, one of your Committee recollects, as well as I do, that the best lawyer of his age in the State, James C. Alvord, in an argument which has never been answered, replaced that statute, for the express and avowed purpose of curbing that law of 1793. That was in 1837. We come to '43. Then came the Latimer Bill; in 1850, the Joint Resolves of the Legislature; then the statutes of 1852, 1855 and 1858. It is an unbroken line of statutes. The evident intention of this Commonwealth, like her sisters, was to grasp every thing she could consistently with her loyalty to the Constitution.

Now, all we ask you to do to-day, gentlemen, is to follow in those same footsteps—not to turn back upon the course of sixty or seventy years. You talk of erasing this statute, but in fact you change the legislation of Massachusetts for sixty years; for that has been the essence of it—that a slave should have the protection of the common law. Our Constitution says that the Executive, Judicial and Legislative functions shall be kept separate. If your predecessors in these legislative halls have passed unconstitutional acts, it is the duty of the Judiciary, not yours, to set them aside. Who calls on you to sit in judgment on the constitutionality of the doings of sixty preceding Legislatures?

Again, gentlemen, before I proceed to give you some reasons why I think this statute should stand, let me refer to another consideration. It is said this Fugitive Slave Bill is constitutional. The Supreme Court of our State and of the United States say so. It is very true that our Supreme Court did say so, in the Simms case; but it said so, as my friends have shown, not on reason, but simply on precedent. Chief Justice Shaw said, the law of '93 has been held constitutional; this law is very like it; therefore, this is constitutional. He assigned no reasons. As a precedent, therefore, this decision has that force, and no more. In 1858, the Supreme Court of the United States (in *Ableman* vs. *Booth*) decided this Fugitive Slave Law to be constitutional. Granted. How much shall we yield to a precedent? How far are we bound to yield to it? I do not go to the extreme length of the Democratic doctrine, and say that we shall yield nothing. You know our Democratic party have claimed almost the French law, that precedents are of no weight whatever. But I do claim this, that judicial decisions, on a new point, but once argued, made in troubled times, under grave suspicion of being influenced by political considerations, are not

final and conclusive. What does James Buchanan say—and certainly he may be considered some authority, southernwise, on such a question as this—speaking of the banks—in 1841?

"Even if the judiciary *had* settled the question, I should never hold myself bound by their decision while acting in a legislative character. Unlike the Senator from Massachusetts (Mr. Bates), *I shall never consent to place the liberties of the people in the hands of any judicial tribunal.*"

"No man holds in higher esteem than I do the memory of Chief Justice Marshall; but *I should never have consented to make even him the final arbiter between the government and the people of this country on questions of constitutional liberty.*"

Sitting here as legislators, you are not bound by an unbroken line of precedents from the judicial bench. But here is only a single precedent—a late one—only two or three years old.

How does South Carolina herself behave in such a case? She is the State that is making the trouble on this occasion. Let me tell you a piece of her history. In 1820, she passed an act providing that any colored cooks or stewards of vessels coming into the State should be imprisoned during their stay, that the captain should pay their jail fees, and that if he did not, he should be liable to a thousand dollars fine, and the negro men, if they remained there, should be sold into slavery. Mr. Justice Johnson, of the Supreme Court, in 1823, ruled the law unconstitutional. Mr. John Quincy Adams, at the request of the British government, brought the unconstitutionality of the law to the notice of South Carolina. Did she repeal it? Not a bit of it. Massachusetts sent Hon. Samuel Hoar there, later down, to test the constitutionality of that law, and try the case; she mobbed him out of Charleston, and passed a law that if Massachusetts sent any body else to do the same thing, she would put him in the State Prison. And then she waited, with that law, a little modified, but unrepealed, essentially, on the statute-book, until 1856, when the Dred Scott decision is supposed to have made it constitutional. South Carolina kept an unconstitutional law which she valued for thirty years, until she brought the Supreme Court round to her opinion. In spite of foreign governments, in spite of sister States, in spite of the Supreme Court, she kept the statute there. She said, "I believe it constitutional; it is necessary for the safety and the police regulations of my State. I will wait, until the Supreme Court has opportunity, on argument, to revise or substantiate its position." And she has conquered. Now, what do we ask? All we ask is—suppose the whole statute is held to be constitutional by the present Supreme Court—all we ask is, wait a year or two, and give us an opportunity for re-argument, and see if the Supreme Court mean maturely to adhere. That would be no offence. Even then we should be only following the course which the Southern States have universally followed in regard to the Supreme Court.

But they say "our law is not constitutional." The lawyers doubt; some are on one side, and some on another. Governor Andrew says it is not unconstitutional; Mr. Charles G. Loring, perhaps the highest authority, says it is not unconstitutional. With a single — and perhaps not even one — exception, Judge Thomas thinks it is not unconstitutional; and his decision is the more weighty, because on political grounds he thinks it should be repealed. Again, *no lawyer believes it to be unconstitutional, except on the ground that the Fugitive Slave Law is constitutional.* No man says it conflicts with the Constitution. All over the free States, this talk of unconstitutionality means that it conflicts with the Fugitive Slave Bill, and not with the clause of the Constitution.

That is the only point of Mr. Joel Parker. He is another person who asks us to repeal it—a person who said, in the *Journal*, day before yesterday, speaking of the Simms case,—in which a man was arrested by a lie, by a policeman of Boston, for theft, and when he was got into custody was turned over to the fugitive slave claimant—a falsehood that in any decent court would have vitiated the arrest,—and then tried, as you know, behind bayonets, and our Supreme Court crawling under a chain to its own room—Mr. Joel Parker says of that week, of the efforts of Charles G. Loring to make the Supreme Court issue its *habeas corpus*, of the unanswered and unanswerable argument of Robert Rantoul for the same purpose, he says "it was an amusing week." It is the only phrase he has for that black week—it was an amusing week!

But even he, in all his argument, has no basis for his objection to the Personal Liberty Law, except the constitutionality of the Fugitive Slave Bill. Now, on that should I say too much when I stand in front of Charles Sumner and Horace Mann and Robert Rantoul and Charles G. Loring, and Franklin Dexter,—the glories of the Suffolk Bar,—and two-thirds of the profession throughout the Free States—should I say too much if I said that no man whose voice was not angered by disappointment, corrupted by politics, or choked by bribes, ever held it constitutional?

But, putting that aside, gentlemen, look at the provision itself. Here it is. The man who is arrested as a fugitive slave shall have a right to trial by jury. How can a man be arrested as a fugitive slave? He can be arrested in three ways; first, the slave-hunter can come to the streets of Boston, and take him, as he would a stray horse, without warrant or officer, or asking leave or aid of any court. The Prigg case, and all the decisions say he may come, and take him where he can find him, put him in a carriage, and drive him out of the Commonwealth, and need not apply to anybody. That is the first method of arrest, undenied on all sides.

Now, as Mr. Charles G. Loring says, (I am using his argument,

as well as that of others,) if a man does that, of course the Supreme Court of Massachusetts has a right to issue its *habeas corpus*. There is no lawyer, anywhere, that denies it. This right of *manucaption*, as it is called, seizing fugitive slaves as one does stray cattle, comes from the common law, and is wholly independent of statutes. Whoever avails himself of it is liable to the writ of *habeas corpus*; and the slave so arrested may have trial by jury. About this there is no dispute. So far, our Personal Liberty Bill is undoubtedly and unquestionably constitutional. But do slave-hunters often avail themselves of this right? In two-thirds of the cases. It is the existence of such a right that makes the kidnapping of negroes so easy and common.

This, then, is one case in which the law is undoubtedly constitutional,—if a man comes, puts his hand upon a slave, and, without appealing to anybody, tries to take him out of the State. It has been done in our harbor, four times, to my knowledge. It was done in the harbor of Cape Cod—you know it—the man carried the supposed slave away; and the parties indicted for assisting him were acquitted for want of jurisdiction. I know a case where the captain of a schooner from North Carolina, at our South Boston wharf, was keeping a black man in the hold of his vessel until he could get word to Boston, where there was a power of attorney for him (which had been sent on by mail) to act as the agent of the master; and had we not heard of it, and got on board the schooner, and taken him off, the man would never have touched Massachusetts soil, though he floated in Massachusetts water. Suppose the captain of that vessel had stood at the gangway and refused us entrance, would there have been no use in having Judge Bigelow's writ allowing us to go on board, and see who this captain was, and who was the man whom he was taking the responsibility of carrying back to North Carolina? We have had several of these cases in the harbor of Boston, and I regret to say that, in a majority of them, the black man has been carried back without the possibility of interference.

Then there is the *second* method of arrest. Suppose a man seizes his slave, with intent to carry him before a Commissioner. In another case, where a black man was rescued, I rejoice to say, by the interference of friends, the captain had got him in the hold of his vessel, and had sent to Mr. Hallett, for the purpose of having the papers prepared for carrying him away. But Mr. Hallett could not be found, and he was obliged to wait some twenty-four hours. Suppose that, during that time, or while the man was being carried up from the wharf, while there was neither warrant nor other process under the Fugitive Slave Bill, one of the Judges of the Supreme Court had issued this writ, would he not have had a right to do so?

Perfectly legal. Our statute, therefore, is undoubtedly and unquestionably constitutional in these two cases — and they apply largely.

A man cannot always get his papers before he finds his slave. He finds the man first, and gets him into safe custody. Usually, he bribes a policeman to arrest the fugitive as a thief, and hold him on that charge until the papers are properly certified; and I am glad to say that we have made this infamy of acting under the Fugitive Slave Bill so intolerable, that in some cases the master has to run from one Commissioner to another, for a long time, before he finds one ready to serve. During that long interval, (I hope the growing indignation of the community will make it longer and longer,) the provisions of our Liberty Law apply, and are in no conflict with the Constitution or the Fugitive Slave Bill.

We come now to still another case—the *third* method of getting fugitives back. The master has got the slave into the hands of Commissioner Curtis, and has obtained a certificate. You say, "Well, it is all done; there is the man, and there is the certificate." How do you know it is finished? Are you sure the certificate is regular? It is a hideous statute. It will take its place above the code of Draco. It makes Jeffries a decent man in comparison. It says this certificate—of course, meaning this certificate, *if regular*—is unappealable; you cannot touch it; it is conclusive and final. But His Excellency has told you, in his address, that he knows of one case in Boston, in which the person claimed was sent back where the warrant against him did not purport to be issued by the proper officer. Suppose the Supreme Court had issued its *habeas*, and the Marshal had laid his papers on the desk of the Judges, and they had said—"Mr. Marshal, you meant to get a certificate, but you have not got one; let that man go"—is not that legal? Such cases are not rare. One of the first cases before the infamous Judge Grier in Philadelphia was so blunderingly conducted, that even Grier had to send the claimant out of court, and took the opportunity of instructing such hounds how to proceed in future. In Cincinnati, a Marshal persevered in arresting a fugitive on a warrant which a State Judge had just declared illegal; and in Buffalo, Judge Conkling, of the United States Court, discharged a man whom a Commissioner had surrendered, probably on this ground.

Again, gentlemen, there are many cases where we need to construe a law. And here I come to a point to which I ask the particular attention of the Committee. How do we ever curb statutes? By getting them construed. Under our doctrine of precedents, that is the only sheet-anchor of justice. When there comes a bad judicial precedent, as Gibbon says in his history, "the ingenuity of humane men is employed beneficially in undermining wicked laws." The whole history of the English government is a history of that

undermining, if they could not directly contest, decisions. Here sits the man [SAMUEL E. SEWALL, Esq.] whose fame as a lawyer I would rather have than that of ten Chief Justices, for one single fact, and that is this. For fifty years in this Commonwealth, we so carelessly scrutinized the Constitution and that fugitive-slave clause, that whether a man had escaped or was brought to Boston, it did not matter; the District Court returned him all the same. Nobody put on his spectacles of humanity, and proved that the law said "*escaped*," not "being brought into." My friend Mr. Sewall, in opposition to the whole bar of Suffolk, started the point that the word "escaping" had a loophole large enough to save every slave that was brought into the Commonwealth. In the first case, I believe, the Court refused to sanction his distinction. But the Med case came very soon. By Mr. SEWALL'S side there stood ELLIS GRAY LORING, who almost at the same moment had adopted the idea, and sustained it with rare ability. And in defiance of the profession, and the first impression of the Bench itself, they carried their point, and established the Somerset case of Massachusetts — the Med case — Commonwealth vs. Aves. Who does not generously envy a man the look back upon such a life! That is one instance of an attempt to scrutinize laws, and oblige Courts to construe them.

To the same legal sagacity and sleepless vigilance, we owe another humane decision. Slaveholders were wont to bring here young slaves to wait on them, and in such cases the holders claimed that as quasi guardians they could carry the slaves back, the children themselves being too young to make their election between staying here and returning South. But, on argument, our Court held that Massachusetts, considering such children too young to make so momentous a choice, would *keep them here* under guardianship until, full-grown, they were fit to decide so great a question. Here is another instance of beneficent construction.

Let me mention yet another. My friend, (I am proud to call him so,) JAMES C. ALVORD, in the report to which I have referred, in 1837, makes an argument to show that no State officer has a right, or is bound, at any rate, to act under the statute of 1793. New Jersey, New York, and Pennsylvania had held the same argument. It remained in that unsettled state,—every body saying, "You can never change the statute of '93; Congress will not act; the Courts will not act." Do you know, gentlemen, that statute never got a judicial construction until the Prigg case, in 1842? It floated carelessly, and never went up to the Bench until fifty years after its enactment. The moment we got a case before the Supreme Court, they endorsed the argument of Mr. ALVORD. They held, a State officer is not bound to act; and some of the judges said he cannot act. We had conquered our point; the gain was great. You see

there would sometimes be only two judges authorized to act in the whole State, and the slave-hunter could not find them. His slave might be in Newburyport, and he must go a hundred miles to get an officer to help him. It was an immense gain. The Supreme Court cut off all the facilities that the master had in calling upon State officers to assist him; and when Judge Story came home with that decision,—I called it infamous then, as I call it now,—infamous enough to dim a reputation ten times as bright as that of Judge Story,—when he came here, he called it on this account "the safeguard of the fugitive slave."

Now, just what the Abolitionists did with that statute of 93, just what my friend [Mr. SEWALL] did with the careless legislation of Massachusetts, which returned slaves brought here, as escaping fugitives, we want to do now. We want the opportunity of carrying up to the Supreme Court of the United States these doubtful questions. We want the opportunity of making the Supreme Court define itself; of appealing from the ignorant, hasty, heedless decisions of a slave Commissioner to the judicial Bench. Such an opportunity these sections of our Liberty Law give us. Without such a law, no matter how clear a law point may be—no matter how universal the opinion of lawyers that a fit judge would give relief in the case supposed, the Commissioner's certificate is final, and admits no appeal. Let me illustrate my meaning, gentlemen. In doing so, I will suppose first a case which brings to my mind the saddest feature of the Prigg case. The saddest feature,—and that is saying a great deal, for no man who loved Judge Story, or wished to respect our Supreme Bench, could ever read that case without tears,—the saddest feature is one I noticed publicly years ago, and, so far as I know, RICHARD HILDRETH is the only one who has touched on it beside. By a decision of the Supreme Court of Pennsylvania, in the 2d of Sargeant and Rawle, 305, it was held that any child born of a fugitive slave in Pennsylvania, more than a year after the coming of the mother into the State, was free;—that if a fugitive slave was permitted, by the *laches*, by the indifference of the master, to remain in the State, and a child was born to her after the lapse of a year, that child was a native of Pennsylvania; it never escaped from slavery, and therefore could not be returned. This Mr. Prigg took back Margaret Morgan, and two or three children, one of whom, it appeared by the statement of facts in the case, was born over a year after the escape of the mother into Pennsylvania; but you may read through the decisions of those seven judges—each one giving an opinion—and you will not find one word that alludes to that child! She is given up as though she were a piece of waste paper, not worth considering. No judge referred enough to the decisions of Pennsylvania to even detect or set

aside this principle. They never thought it worth while to try to see if the child could not be saved, nor even to notice it. She was given up unregarded like her mother's shawl or shoes. Not one of the judges of the United States Court, through the whole of these lengthened decisions, deemed the principle worth a line — not worth a word!

Now, gentlemen, I have here, among the very few cases I have collected, one where the slave had been a fugitive twenty-two years; another nineteen years; another sixteen years; another fourteen years; and another ten. In one case, the slave had two children; another had six. Now, suppose such a case in Massachusetts. Suppose a master lets his slave woman come here and live twenty years, and she has a family of children. Then Mr. George T. Curtis signs his certificate, and the mother and all her children are given up—as was done in a case tried before Judge Kane, in Philadelphia—with no line of the Supreme Court to authorize their being surrendered—do you mean to say that our Supreme Court may not issue the *habeas corpus*, and say to the Supreme Court of the United States, "This point is worth arguing; we want to know whether you really hold to that." There is this overlooked point of the children born into a free State by the *laches* of the master. Is not that worth arguing? We claim of you, the Legislature of Massachusetts, that you give us the means of carrying up that point. Ought you not to give it to us? Probably there are hundreds of such children of fugitive slave women in New England. Are they not worth an effort to save them, natives of New England?

Again, as my friend Mr. Burt has said, there is the Med case. That case, which decided that a slave brought here was free, places Shaw's name by the side of Mansfield. So legislate that we may still further use it to curb the Fugitive Slave Bill, and its worth shall dazzle us blind to that slave-chain under which Judge Shaw once stooped to enter his own Court. That girl resides in this Commonwealth. Suppose George T. Curtis should receive an affidavit from Alabama or Mississippi of ownership; an affidavit of escape—with their view of the law that can be made technically; proof of identity—that is easy; and he issues his certificate authorizing the claimant to take her from the city of Boston. "She was mine in 1834," says the certificate; "she left Mississippi; I can show you that she is the identical person." "Yes; take her," says the slave-hound Commissioner. Med takes the certificate, carries it before the Chief Justice of Massachusetts, and says, "On your record, it is shown that I was brought here; I did not escape. That certificate, formal as it is, is a lie, according to Massachusetts." Has not Massachusetts a right to say—"This is a

hard statute; and, in 1858, the Supreme Court have said, generally, that it is constitutional; but here is a new point; we would like to know whether they mean to carry it to this extent; perhaps they do not; it is worth arguing."

What did Massachusetts do when grass grew in State street, under the embargo? The Supreme Court deemed it constitutional. She sent Sam Dexter to argue it. He argued it, was defeated, and we sat down to become bankrupt. But we were not going to be bankrupt until we had argued the question. Neither are we going to surrender Med until we have a chance to argue the point.

Whence came the famous Dred Scott case, gentlemen? The South made it up to settle the question of slavery in the Territories. What is the history of the well-known Lemmon case now pending? Mr. Lemmon, of Virginia, *brought* his slaves into the free State of New York. Judge Paine held them emancipated. Now the State of Virginia retains Mr. O'Conor, the head of the New York Bar, to contest the point, and is carrying it up through all its stages to the last appeal. Has not Massachusetts the same right? May she not do for liberty what Virginia does for slavery? Mr. Chairman, this is all we are asking you to do. What we want is, to save the opportunity of testing such questions as I have specified. If the arrest is made without a warrant, the *habeas corpus* is clearly constitutional. If with a warrant, even after a certificate, I have suggested a dozen cases where Massachusetts might legally and loyally bring a case before the Supreme Court, and have them construe the law. It is a new law as yet; and if we are going to compromise—if, as Mr. George T. Curtis would have us, we are to yield up every thing to South Carolina, and to exist hereafter as a dependency of that slaveholding dynasty and despotism—let us at least provide the material to know how heavy the chains are, and how they hang.

Do not say I am supposing impossible, or even improbable cases. Slaves free by law, in consequence of being brought into free States, have been claimed and surrendered in several instances—once in Cincinnati, twice in Pennsylvania.

Again, when Anson Burlingame was in this Legislature, four of your citizens were taken out of a vessel in one of the ports of Texas, and sold as slaves, to pay their jail fees. You will find the case stated in the Resolves of 1852; but I have no knowledge that anything was ever done for them; certainly, the men were not redeemed. Suppose that one of them should escape, and could show that he was born free, and under a law that nobody can say is constitutional, was sold in Texas. Do not say, now, I am supposing a case. I can cite you this very case in Delaware. It is a very striking one. The first that was known of him, he was heard calling for help from

the guards of the steamboat, on which he had made his escape from Savannah. On looking over the bows, he was seen, and drawn on board. He had been holding on to the ropes for several days, the water frequently sweeping over him. The provisions in his pocket were saturated with salt water, and dissolved to a pulp. This was in Delaware Bay. The captain ordered the vessel to be put into Newcastle, where the man was lodged in jail. He claimed to be a freeman, born in Philadelphia; and, brought even before a Delaware Judge, his claim was established, his freedom fully proved, and he was set free. That very man was re-arrested, under the Fugitive Slave Law, and surrendered by Commissioner Guthrie, and is now in the slave States. It appears he went from Philadelphia to Maryland to reside, contrary to the law of that State, was fined for the offence, and being unable to pay the fine, was sold as a slave for life! and on this showing the Commissioner sent him to Georgia, where he had been sold. Now, suppose that very case occurred in regard to one of our stewards from Texas—will you say that you do not want to keep in your statute-book the means of framing a question to be carried up to the Supreme Court, for its decision?

Then there is the case of a mistake of form. I referred, a moment ago, to one case of that character, mentioned by His Excellency in his Address. Suppose a certificate is not regular; and that is a case that has actually occurred, not only in the case cited by Gov. Andrew, as occurring in this Commonwealth, but in another case, in Ohio. A U. S. Marshal actually produced a certificate that was not regular; a State Judge set it aside as irregular. The Marshal arrested the man a second time on the same certificate, in defiance of the State authority; and I am ashamed to say that Judge McLean, when the Marshal was brought before him, on a claim for damages by the State authority, for defying the State, set him free. He actually defied the Judge on the bench who had noticed the mistake of form. Now, sir, in a case of that kind, is not the Supreme Court to issue its writ, and look into the papers, and see if they are correct? That is all. The *habeas corpus* should be kept alive for that purpose, if for no other.

Another case. When Anthony Burns was here, he was under a lease for a year. The year had not expired. The question was, whether his master or the temporary lessee had the right of claim. This is a nice question, I admit, but we want it settled. It is a nice question; but in that finest specimen of judicial eloquence, when Mortimer claimed his peerage, the Judge said, "In a case like this, of ancestral honors, I will take hold of a twig or a twine thread to uphold it." Will you not take hold even of the slightest twig for God's immortal soul? I know it is a difficult, a nice question, but

it is one that was raised; and if Edward Greeley Loring had been a Judge, and not a Commissioner, he would have allowed us to argue it.

Again: the United States Constitution says, "Any person held to service or labor in any *State*, under the laws thereof." Mark you, "in any STATE." The Supreme Court of the United States has ruled that the District of Columbia is not a State.

Now, as the District is not a State, if a slave escapes from the District, he does not escape from a State, and, consequently, he cannot be recovered. The Fugitive Slave Bill, in spite of this decision, says, "Any person held to service or labor in any State or Territory, or in the District," &c. Is that constitutional? It has never yet been so decided. Shall we the free States surrender so large and base a privilege without argument? Hold on to your Liberty Bill, which alone affords us the chance.

I am not dealing in technicalities, Mr. Chairman. When Judge Story came home from giving that decision in the Prigg case, in Charles Sumner's office, Mr. Sumner (he told me the anecdote the next week,) said to him, "How could you rule the act of '93 constitutional, when it does not give us the jury trial?" Said the Judge, "That point was not raised in the argument; or, if it was, it was not treated at any length. I should like to hear argument on that point. If another case arises, I hope it will be elaborately presented." Mr. Sumner made that statement to me the week after, as I have said; and you will find it preserved in Judge Story's Life, by his son. In the same spirit, we say that this decision in the case of *Ableman* vs. *Booth*, is a general decision. We want to preserve the mere power of narrowing that decision. It is the honorable policy of the State. Every atom of the bond, but not a hair's breadth beyond it!

Take another point. I have in this book cases of slaves who have escaped twenty-two years, nineteen, sixteen, fourteen, ten years. Why, gentlemen, if you let a piece of land in the city of Boston alone twenty years, you lose your title. If you let a note of hand alone six years, you lose your title. How long does slavery hold on to a man? Does time never bar it? Is there a principle of law which holds that titles are quiet for land after twenty years, and for a note of hand after six years, and no principle that quiets the title to a man? Are all the principles of the law to be sacrificed? We will not believe it till after further struggles.

In 1428, that law of Edward the Confessor, which made all fugitive slaves free who had resided one year and one day in London, unclaimed by their masters, was solemnly confirmed and extended to all cities, walled boroughs and castles in the realm. From that privilege, long enjoyed, London took the name of the "Free Chamber of the King." Shall we, in the nineteenth century, admit no such

principle as the Confessor established? Let a slave stay, unclaimed, twenty years, and still retain your merciless rights over him! This is a serious question of what the law calls *laches*—neglect. The law holds to the quieting of titles. Let us claim that element of it now.

Do not say, gentlemen, they are merely technical points. Suppose a man resides in Billerica twenty years, marries, and has children. He is a day laborer, and earns his six dollars a week. Of course, he does not lay up anything. Slavery swoops him up, and his children come upon the town. Has not Billerica something to say against the right of a master to let his slave live in the town twenty years, burden it with a family, and still have the right to come and take him?

Here is a man who escaped sixteen years ago. Suppose I have employed him as a mechanic. There is such a man in this very hall, a carpenter—a master-workman. Suppose I have employed him; he is in my debt; he has insured his life; I know if he lives he will pay me. I do not know he is a fugitive; I am not bound to know it. He has lived in my street ten years. Slavery comes and takes him, and my debt with him. Have I no claim for *laches?* He has been mixed up with the affairs of a town many years, and become possessed of the knowledge of facts vital to some suit of mine. On his testimony may turn some claim of mine to thousands of dollars. I found him an intelligent and faithful neighbor. I was not bound to know, could not know, he was a fugitive. His master, whose neglect has brought me into this position of trusting him, carries him away. Have we no right to claim that this neglect of years, perilling thus our interests, forfeits the master's rights? May not the point be raised? He has married. Having established a good character by years of diligence, he marries. Has the slaveholder such an unlimited right that he may make this wife—guilty of no neglect or imprudence in forming the relation—a widow? The slaveholder has been neglectful; she has not. Suppose we grant so horrid a supposition—absurdity—as that, legally, their rights, wife's and slaveholder's, are equal—which shall give way? Of course, he who has been guilty of *laches.* May we not raise the question? There are a thousand questions that can be raised. He has committed crime; he murdered my brother, or set fire to my house. He is in the State Prison. Can the master take him out, or can Massachusetts hold him? Shall George T. Curtis override the criminal law of Massachusetts, or shall he not? We want to put the question to Mr. Chief Justice Taney. You know, gentlemen, there was never a statute drawn that you could not drive the Worcester rail-train through it. How do we curb a statute? Why, by putting somebody forward who is able to raise these questions.

You may say, this is claiming a great deal. We mean to claim

a great deal—every thing that can possibly be gotten. I need not go further. I might cover half a dozen other points. I know slaves who have fled here, and then bought themselves. Some, meaning never to venture within a slave State, do not trouble themselves to comply with slave laws, and have their free papers certified and recorded in their county courts. Of such a man an unprincipled slaveholder might bring all the evidence of ownership, escape and identity before a Commissioner—and there being no evidence to the contrary which the Commissioner is bound, which, indeed, he is authorized to notice—such a man must be taken back.

Another case. I am telling you cases that have actually occurred—here is another. George, a negro man, was arrested in Washington, Indiana, and claimed by a Mr. Rice, of Kentucky, as his slave. Judge Clemens ordered his surrender under the Fugitive Slave Act. It was done, and Mr. Rice took him to Louisville, and there sold him to a slave-trader, who took him to Memphis, Tennessee. Here a man from Mississippi saw him, and said, "This is my slave; he is not Mr. Rice's"; brought the case before a court, and got him. Now, suppose before Mr. Rice left Washington, Indiana, with the certificate of the Judge, George had escaped and come to Massachusetts, and his claimant had followed and recaptured him, and the Mississippi man had seen him here, and said, "This is not your slave; he is mine." Mr. George T. Curtis might say, "He is not; you cannot prove title to him." He says, "He is; I owned him in Mississippi, and he escaped from me there." If a negro is to be enslaved, he may much prefer one master to another. Why hurry him to Texas at a day's notice, when he really belongs to Maryland? Let him have chance to get to his real home, if it must be a slave one. In the conflict, he may save his liberty. I know it is very improbable; but Judge Taney will die sometime, his Court will be reorganized, and we may get a decision that would do honor to Lord Holt or Lord Mansfield. My friend has alluded to the Somerset case, in England. Granville Sharpe worked ten years, in opposition to the whole bench and bar of England, before he subdued Lord Mansfield; but finally he came over to the opinion of the war-office clerk, Granville Sharpe, and immortalized himself by a decision that Granville Sharpe taught him.

I know slavery owns a great deal, but she does not own the State House; she cannot absolutely clean out the Commonwealth. There must be a pause somewhere — we only want to find out where it is. Therefore, I propose, in regard to this *habeas corpus*, even in regard to the man who has got George T. Curtis's certificate, that with it the Supreme Court shall have the right to raise questions that cannot be raised otherwise. We waited until 1842 before we could get the question properly before the Supreme Court on

that law of '93. This is the machinery to do it. Massachusetts has pledged herself for sixty years to just this class of legislation. You may think this is interfering with constitutional rights; but seeking to know and define one's legal rights is not disloyalty to the Constitution. To try suits on doubtful points is not unconstitutional. It is what the profession exists for. It is the only thing that justifies such a nuisance.

Who asks us to repeal this law? They say South Carolina asks it. If she does, I can only say, it used to be a principle, "When you ask equity, you must do equity. You must come into Court with clean hands." At this very moment, South Carolina has her statute-book covered with unconstitutional laws about our seamen. South Carolina complain of our Personal Liberty Bill! I undertake to say that the merchants of Boston have paid, in the harbor of Charleston, more unconstitutional jail fees than would buy all the slaves that ever escaped from South Carolina. South Carolina ask YOU to change your statute-book! I would like to see one member of this Legislature trust his person in the State of South Carolina to-day—one of them! Vote even for the repeal of this statute, take a certificate from Governor Andrew that you voted for it, with the broad seal of the State on it, go down there, and you will never come back—never—if they only know that you come from Massachusetts! And such is the State that comes into our High Court of Judicature, and asks you to repeal this Personal Liberty Bill!

After all, the objections to this Personal Liberty Bill as unconstitutional are based on the idea that you hold the Fugitive Slave Bill constitutional. If you do not, there is no need of a word of answer. If you do not, it is a hideous monster, which you are bound to have every possible weapon in your armory ready to resist. This machinery you are bound to provide for the protection of the fugitive on your soil. You must not say, Possibly the United States may interpose. We do not want possibilities; we are not bound to wait for the U. S. Government; Massachusetts, our own State, is bound herself to furnish means adequate to the protection of all on her soil. She may not trust that some other government will do it, and so herself omit it.

Then, gentlemen, who says the Fugitive Slave Bill is constitutional? Massachusetts solemnly says it is not. Who says it is? Well, the forefront of the argument is borne by a Professor at Cambridge. It seems a former Legislature refused to pay a large bill of his, and, in consequence, he took that side of the argument. By his side stand who? Nobody who could have an office in Massachusetts to-day;—no, not one. Who stands on the other side? Every great name of which we are proud. You may repeal

this law, but unless you shovel Massachusetts into the ocean, you cannot keep it repealed. It has been on the statute-book ever since 1784; it will go back there when you leave these halls. It cannot be hindered. It is not a momentary spasm. It is the inbred and imbedded purpose of the Commonwealth.

Who says that this law should be repealed? Republicans? How do you sit here, gentlemen? You sit here under an oath to the Constitution of the United States. Does one of you mean to obey that Fugitive Slave Bill? You are going to change that statute-book at the bidding of the Fugitive Slave Bill. Do you mean to obey it yourselves? Mr. Joel Parker, who thought the Simms case "amusing"—says, after he has finished his argument on the constitutionality of that Bill, if a man should ask him to aid in enforcing it,—what? *He won't do it!* Every man in this Legislature, Mr. Chairman, will say the same—you know it. Why will you say the same? Because you think the law good? You will say the same for one of two reasons: either because, like Charles Sumner, you do not believe there is a fugitive slave clause in the Constitution—some of you take that position—and if there is no fugitive slave clause, there is no Fugitive Slave Bill; or because, though admitting that the Courts declare it constitutional, personally you will never obey it. Those of you who take the first position, who say, "We came up here and swore to support the Constitution, believing that there is no fugitive slave clause"—by what right do you repeal that law—our only barrier against infamous usurpation? One half of you say that. The other half say—"The Courts say it is constitutional, and we cannot actually wipe it out, but personally we will never obey it." Then we claim of you, if personally you are ashamed to obey it, that, legislating, you shall give every kind of machinery possible under the Constitution to curb it, to make it as inoffensive as possible, to test it again and again, to carry it up again and again. What did the South do on the question of banks? They carried it up again and again, until they got the Supreme Court on their side.

One word more. The only other section of our Personal Liberty Law which is objected to is that which provides that if the party arrested as a fugitive slave is found not to be a slave, the person or persons arresting him shall be punished. Judge Thomas says that, perhaps, ought to be qualified, so as to read that if done dishonestly, it is criminal—still he does not think the clause unconstitutional. Mr. Loring does not think any change necessary; the word "pretence" is sufficient, to meet Judge Thomas's objection. But look at it, Mr. Chairman. Men in our harbor are not bound to assist a master in arresting his fugitive; they do it for money. He usually bribes a policeman to take off his star, or a constable to drop his spe-